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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/828,365  | 04/20/2004  | Stanley J. Flashinski | J-3997              | 4882             |
| 28165   | 7590        | 07/13/2005            | EXAMINER            |                  |
| S.C. JOHNSON & SON, INC.<br>1525 HOWE STREET<br>RACINE, WI 53403-2236 |             |                       | PAIK, SANG YEOP     |                  |
|   |             | ART UNIT              | PAPER NUMBER        | 3742             |

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                        |  |
|------------------------------|------------------------|------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>    |  |
|                              | 10/828,365             | FLASHINSKI, STANLEY J. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>        |  |
|                              | Sang Y. Paik           | 3742                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 April 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 11-15, 18 and 19 is/are allowed.
- 6) Claim(s) 1-9, 16 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kunze et al (US 5,230,867).

Kunze shows the claimed mat including a substrate made of a plastic material having an aromatic agent applied thereto, the mat forming a first substrate portion and a second substrate portion each containing the aromatic agent therein, the substrate portions defined by the moat or channel that extends into the substrate.

With respect to the recitation of having the same material for the first and second volatile materials that are being released at different rates, Kunze also shows the same material for the first and second volatile material, and since they are made of the same material, they would also be inherently released at different rates as is done with the claimed material. The prior art Kunze having the same structure as that of the claimed structure would be inherently capable of performing the same function as that of the claimed device.

With respect to the recitation of forming the moat by the hot forming die, it is noted that such recitation is a product-by-process claim limitation which does not determine the patentability of the product if the product is same or obvious from the product of the prior art even though the prior art was made by the different process. With respect to the claims 7-9,

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Kunze shows the substrate that is made from the same material as that of the claimed substrate, i.e., plastic material. Since they are made of the same material, the claimed properties such as the claimed heat resistance are presumed inherent.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunze et al (US 5,230,867) in view of Weyenberg et al (US 4,145,001) and Spector (US 4,695,434).

Kunze shows the structure and method claimed including obtaining a mat having a substrate with the first and second portions having the aromatic agent applied thereto. However, Kunze does not show the hot forming die to form the moat and a heater upon which the mat is placed.

Weyenberg shows a layered mat having the volatile substance contained therein, and it further shows applying a hot die to press the mat to melt and adhere the mat layers together. Weyenberg further shows that coextrusion process is performed 400° F or above which is equivalent to 204° C or above. In view of Weyenberg, it would have been obvious to one of ordinary to apply the hot die to form the moat in Kunz and to melt and adhere an enclosing outer layer to form a more sealed mat.

Spector shows a heater upon which a mat containing a volatile substance is placed thereto. In view of Spector, it would have been obvious to one of ordinary skill in the art to adapt

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Kunze with a heater to heat such mat to facilitate more enhance vaporization of the scented volatile substance in the mat, and while Spector does not explicitly show the heating temperature, it would have been obvious to control such heating temperature to further control the vaporization rate since higher temperature would yield more and high evaporation of the volatile substance. While Kunze does not shows that the first and second volatile materials are released at different rates, such rate would have been inherently performed as Kunze shows the same material for the first and second volatile materials and it would have inherently released at the different rate when further heated by the heater of Spector.

With respect to claim 4, the pores of the moat walls would have been closed due to the melting of the substrate as performed by Weyenberg.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunze et al (US 5,230,867) in view of Arnell et al (US 6,713,024).

Kunze shows the mat having the substrate made of a plastic material, but it does not show the plastic material is polyethylene.

Arnell show a volatile containing carrier made of a plastic material including polyethylene. In view of Arnell, it would have been obvious to one of ordinary skill in the art to adapt Kunze with the plastic material such polyethylene that can contain the volatile substance over time without adversely affecting the volatile substance, and also since such material is well known in the art to withstand high temperature.

*Allowable Subject Matter*

6. Claims 11-15, 18 and 19 are allowed.

***Response to Arguments***

7. Applicant's arguments filed 4/8/05 have been fully considered but they are not persuasive. The applicant argues the prior art does not teach the same volatile materials being released at different rates. However, such capability of releasing different rates would be inherently done in the prior art as that can be done with the claimed invention. There is no claimed structure that would distinction the claimed device from that of the prior art. If claimed device is capable of releasing different rates having the same volatile materials in a substrate, the same can also be done having the same structure in the prior art. Thus, the applicant's argument is not deemed persuasive.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sang Y Paik  
Primary Examiner  
Art Unit 3742

S.Y.P.

syp